

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICHARD JEWELL, et al,

Plaintiffs,

v.

ALBERTO R. GONZALES, et al,

Defendants.

C.A. No. 97-408E
Judge McLaughlin
Magistrate Judge Baxter

DECLARATION OF DENNIS FLATT

I, Dennis Flatt, hereby declare as follows:

1. I have been employed by the Federal Bureau of Prisons ("BOP") at the Federal Correctional Institution (FCI) since September 1989. I have held a number of positions within the Recreation Department at FCI McKean, including Recreation Specialist, Assistant Supervisor of Recreation and the Supervisor of Recreation. I am currently the Supervisor of Education. In this position, I have responsibility for, among other things, the recreation activities that are provided to the inmate population at FCI McKean, including the movie program. I am also familiar, due to my work history and personal experiences, with the movie program since its inception at FCI McKean. This declaration is based on personal information and information I have received in my official capacity.
2. Prior to my employment with the BOP, I was a state law enforcement officer in Florida. I have a Bachelor Degree in Recreation from Slippery Rock University.

3. I am familiar with the Zimmer Amendment which prohibits, among other things, the use of federal funds to show R, X, and NC-17 rated movies in prisons. In response to the Zimmer Amendment, BOP updated its Program Statement regarding recreation programs to incorporate the Zimmer Amendment's prohibitions. PS 5370.10 (Feb. 23, 2000). Likewise, I am aware that FCI McKean updated its Institutional Supplement, IS 5370.08. The policy statements permit institutions to show R and NC-17 movies that have been edited for general public viewing.
4. FCI McKean is a medium security federal correctional institution which currently houses approximately 1600 individuals convicted of federal offenses. The FCI McKean inmate population is a diverse group comprised of a individuals convicted of a wide range of criminal offenses with over 200 inmates serving sentences in excess of 20 years, including 16 serving life sentences. As an example, the inmates serving life sentences have been convicted of murder, armed bank robbery, assault with the intent to kill, mayhem while armed, rape, and drug possession and distribution offenses. Furthermore, over 100 inmates at FCI McKean have been classified as having a public safety factor of sex offender based on current or prior offenses. Finally, approximately 200 inmates at FCI McKean have mental health issues for which they receive treatment.
5. As supported by these statistics, the prison population at FCI McKean is a very different population than what might be encountered at a local movie theater. The individuals watching movies at FCI McKean have been convicted of a felony offense, many of

whom are likely to have anti-social, violent histories with mental health problems and/or are sex offenders.

6. Inmates assigned to general population housing units at FCI McKean are not segregated into any particular housing unit based on their background (race, criminal history, nature of offense, etc) due to security concerns. The BOP does not assign or segregate inmates to a housing unit by virtue of the nature of the offense as to do so could affect their personal safety and security by identifying to other inmates this sometimes sensitive information.
7. The Movie Program at FCI McKean consists of the showing of movies over an internal television system to the common areas in each of the four inmate housing units housing general population inmates at FCI McKean. As a result of the change in BOP policy required by the Zimmer Amendment, the movies currently selected consist of movies rated as G, PG, PG-13, and airline edited. Each weekend, from approximately 5:00 o'clock on Friday to 12:00 noon on Sunday, two movies are shown to the inmate population. The movies are selected from a list or catalogue provided by a local video store.
8. FCI McKean does not exclude any particular class of inmates from any particular movie for a number of reasons. The inherent security risks referenced above, the composition of the inmate population at FCI McKean, the method of showing movies at this institution, and the staff time such an intensive screening would require do not make this option a

viable one.

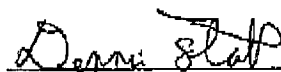
9. Another legitimate concern of the BOP is the work environment of its employees, all of whom are considered correctional workers first. A FCI McKean employee, whether it be a Correctional Officers, Recreation Specialist, or anyone else assigned to the task of monitoring the areas in which movies are being shown, may find R-rated movies offensive. In addition, staff members required to control an area in which inmates with a history of violence or sexual offenses are watching a movie which includes violence or sexually explicit scenes are placed in a potentially dangerous situation.
10. The current BOP Policy also benefits the administration of the federal prisons across the country as it provides for a more uniform application of the types of movies that are shown. Prior to the Zimmer Amendment, when decisions concerning which movies would be shown was left to the individual institutions, a disparity and variance occurred between institutions
11. During this period of budgetary limitations, the current BOP Policy benefits the administration of the federal prisons by removing the time-consuming and staff intensive task of requiring a staff member to pre-screen the movies titles and contents. Prior to the Zimmer Amendment, when select R-rated movies were still permitted to be shown, the decision to show a movie involved a multi-level review process. First, the Recreation Department staff member, usually a recreation specialist, would determine if the content of the movie was appropriate. If questionable, the approval of the movie could have been referred through various levels of supervisors, including correctional supervisors, to

determine the appropriateness of showing such a movie at FCI McKean. Since the Zimmer Amendment and the reduction in the discretion of the movie titles available, although such a process could still in place, it is infrequently utilized, thus saving significant staff resources.

12. In addition to the availability of movies through the FCI McKean movie program, inmates at FCI McKean have access to programming available on cable television, including non-premium channels such as the American Movie Classics. Furthermore, in addition to movies and television programs, inmates have access to reading materials from the institution's leisure library and through incoming publications such as magazines and hard cover books.

In accordance with 28 U.S.C. §1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: 6/30/05



Dennis Flatt
Supervisor of Education
FCI McKean